



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 30, 1994

Ms. Yolanda M. Joosten
Assistant District Attorney
Dallas County
Frank Crowley Courts Building
133 N. Industrial Boulevard-LB 19
Dallas, Texas 75207-4313

OR94-626

Dear Ms. Joosten:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27219.

The Dallas County District Attorney's Office (the "district attorney") received a request for among other things administrative staff manuals, instructions, or memoranda to staff concerning the operation of the courts funded through the Texas Narcotics Control Program.¹ The district attorney contends that the requested information is excepted from required public disclosure under section 552.111 of the Government Code.

Section 552.111 excepts "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In a recent opinion that reexamined the section 552.111 exception, this office concluded that section 552.111 excepts from public disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. Open Records Decision No. 615 (1993) at 5. The policymaking functions of an agency, however, do not encompass routine internal administrative and personnel matters. *Id.* Furthermore, section 552.111 does not except purely factual information from disclosure. *Id.*

¹Although the request letter contains twelve paragraphs designating the information sought, the district attorney states that all the requested information except that sought in paragraph 11 has been released to the requestor.

You have submitted for our review documents marked as Exhibits 3, 4, and 5. Exhibit 3 consists of the following: Three copies of a memorandum from Mike Gillett to the drug court prosecutors dated May 10, 1993; a copy of a memorandum from Mike Gillett to Shannon Ross dated April 15, 1993, with attachment; a copy of the April 15th memorandum from Mike Gillett without attachment but with a handwritten note; and a document marked press release. You have informed us that the "press release" is a draft and was never released to the public. Where a document is a genuine preliminary draft that has been released or is intended for release in final form, the draft necessarily represents the advice, opinion, and recommendation of the draftee. Open Records Decision No. 559 (1990) at 2. Therefore, the draft itself, including comments, underlining, deletions, and proofreading marks is excepted by section 552.111. *Id.* at 2-3. Accordingly, you may withhold the document marked "press release" in its entirety. However, the majority of the information contained in the memoranda constitute finalized office policy or statements of fact. We have marked the portions that may be withheld under section 552.111; the remaining information must be released.

Exhibit 4 is a trial manual for the Organized Crime Division of the District Attorney's Office. The Open Records Act places on a governmental body the burden of establishing why and how an exception applies to requested information. Open Records Decision Nos. 542 (1990); 532 (1989); 515 (1988). Furthermore, in Open Records Decision No. 419 (1984), this office stated that "[a] general claim that an exception applies to an entire report, when the exception is clearly not applicable to all of the information in the report, does not comport with the procedural requirements of the [Open Records] Act." Open Records Decision No. 419 at 3. That decision concerned a self-study report from the University System of South Texas (the "system"). The system had submitted the report and claimed that the statutory predecessor to section 552.111 excepted the report from public disclosure. This office determined that portions of the report were excepted under the statutory predecessor to section 552.111 and indicated which information could be withheld. The manual at issue here, however, consists of finalized office policy, restatements of the law, statements of fact, copies of cases, and office directives. We have found nothing in the manual that would constitute the type of information excepted under section 552.111. Moreover, as you have neither specified in your brief the portions of the manual you wish to withhold nor marked the contents of the manual, we have no way of knowing which information the district attorney felt was excepted under section 552.111. Accordingly, you may not withhold the trial manual under section 552.111 of the Government Code.

Exhibit 5 consists of a memorandum from Shannon Ross to the prosecutors in the Organized Crime Division and a document that consists of office procedures. These documents reflect the finalized policies on the internal administrative and personnel procedures to be followed by the staff of the Organized Crime Division. Nothing in the documents could be construed as advice, opinion, or recommendation. You may not, therefore, withhold these documents under section 552.111 of the Government Code. Except for the information marked in Exhibit 3, the requested information must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in cursive script that reads "Loretta DeHay".

Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/LBC/rho

Ref.: ID# 27219

Enclosures: Marked documents

cc: Ms. Ruth A. Kollman
703 McKinney Avenue, Suite 211, LB 126
Dallas, Texas 75202
(w/o enclosures)